LAKSAMANA REALTY SDN BHD

v.

VONG BAN HIN

HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[ORIGINATING SUMMONS NO: 1-24-321-2004]
30 AUGUST 2005

LAND LAW: *Restraints on dealing - Private caveat - Caveatable interest - Caveator does not raise any claim to title or interest against registered proprietor - Whether caveatable interest exists*

The defendant had entered a private caveat on the plaintiff's land ("the land"). The defendant in his accompanying statutory declaration claimed to be the beneficial owner of the land and that the land was sold to him by one Tan Guan Soon on behalf of Tan Guan Soon's father, one Tan Huan, who had jointly developed it with one Tan Eng Chye. No allegation was made in the Form 19B against the plaintiff as the registered proprietor of the land. The plaintiff applied for an order that the private caveat be removed, claiming it to be frivolous and vexatious. The defendant relied on s. 323(1)(a) of the National Land Code, 1965 ("NLC").

Held (allowing the plaintiff's application):

[1] The ground in the defendant's Form 19B read with his statutory declaration showed that his alleged right to the title or interest in the land, if any, was directed wholly and exclusively against one Tan Guan Soon on behalf of Tan Huan and Tan Eng Chye. The Form 19B had not raised any claim to title or interest against the plaintiff. The defendant's ground expressed in his Form 19B was insufficient in law to support a caveat. (p. 327 a-c)

[2] The defendant had no caveatable interest in the plaintiff's land. (p. 327 f)

Case(s) referred to:
Eng Mee Yong & Ors v. V Letchumanan [1979] 2 MLJ 212 PC ***(refd)***
Goh Paik Swan v. Ng Choo Lum [1996] 1 CLJ 77 CA ***(refd)***
Loke Yew v. Port Swettenham Rubber Co Ltd [1913] AC 491 ***(refd)***
Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor [1995] 2 CLJ 713 CA ***(refd)***
Macon Engineers Sdn Bhd v. Goh Hooi Yin [1976] 2 MLJ 53 FC ***(refd)***
Mok Yong Kong & Anor v. Mok Yong Chuan [2002] 3 CLJ 615 CA ***(refd)***

Murugappa Chettiar Lakshmanan v. Lee Teck Mook [1995] 1 CLJ 545 CA ***(refd)***
N Vangedaselam v. Mahadevan & Anor [1976] 2 MLJ 161 FC ***(refd)***
Ong Chat Pang & Anor v. Valliappa Chettiar [1971] 1 MLJ 224 FC ***(refd)***
Registrar of Titles Johore v. Temenggong Securities Ltd [1976] 2 MLJ 44 PC ***(refd)***

Legislation referred to:
National Land Code, 1965, ss. 320(1)(b), 323(1)(a)

For the defendant - Shaari Nor; M/s Shaari Nor & Co
For the plaintiff - Trevor George De Silva (Chia Cheng Wee); M/s CW Chia & Co

Reported by Amutha Suppayah

JUDGMENT

Low Hop Bing J:

Application

Before me is the plaintiff's ("Laksamana Realty's") application by way of originating summons in encl. 2 for an order that the private caveat *vide* presentation No. 2974/04 dated 30 June 2004 ("the private caveat") entered by the defendant ("Vong") against Laksamana Realty's land held under Lot 70, Grant No. 5246 in Kawasan Bandar XXXVI Melaka ("the land") be removed, with damages to be assessed and costs against Vong.

For brevity and convenience, a reference to a section hereinafter shall be a reference to that section in the National Land Code 1965 unless otherwise stated.

Factual Background

On 29 June 2004, Vong filed an application *vide* Form 19B for the entry of a private caveat on the basis of his statutory declaration in which he alleged that he was the beneficial owner of the land with shophouse No. 86M ("the shophouse") erected thereon, and that the land was sold to him by one Tan Guan Soon on behalf of Tan Guan Soon's father, one Tan Huan, who had jointly developed it with one Tan Eng Chye pursuant to an agreement dated 5 May 1964.

No allegation was made in Form 19B against Laksamana Realty as the registered proprietor of the land.

Caveatable Interest

In submitting that Vong has a caveatable interest under s. 323(1)(a), learned counsel Mr. Shaari Nor relied on *Macon Engineers Sdn. Bhd. v. Goh Hooi Yin* [1976] 2 MLJ 53 FC; *Ong Chat Pang & Anor. v. Valliappa Chettiar* [1971] 1 MLJ 224 FC; *Registrar of Titles, Johore v. Temenggong Securities*

Ltd. [1976] 2 MLJ 44 PC; *N Vangedaselam v. Mahadevan & Anor.* [1976] 2 MLJ 161 FC; and *Loke Yew v. Port Swettenham Rubber Co Ltd* [1913] AC 491, *Mallal's Digest,* Fourth Edn. 2000 Reissue para 2069.

Plaintiff's learned counsel Mr. Trevor George De Silva and Mr. Chia Cheng Wee contended, *inter alia*, that Vong's basis for the entry of the private caveat had nothing to do with Laksamana Realty, as a result of which the private caveat is liable to be removed being frivolous and vexatious. Support was sought in *Mok Yong Kong & Anor v. Mok Yong Chuan* [2002] 3 CLJ 615 CA; and *Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor* [1995] 2 CLJ 713 CA.

At this stage, I find it appropriate to consider the authorities presented for Vong.

First, in *Macon Engineers*, *supra*, the respondent ("purchaser") had agreed to purchase certain property from the vendor, Weng Lye Development Sdn Bhd, for RM175,000 and paid a deposit of RM17,500. The completion date was 6 November 1973. The vendor's solicitor wrote to the purchaser to pay the balance thereof by that date, failing which the deposit would be forfeited. On 23 November 1973, the purchaser's solicitor wrote to the vendor's solicitors pointing out, *inter alia*, that contrary to cl. 7 of the sale and purchase agreement, the vendor was not the registered proprietor of the property and that the purchaser was prepared to complete the purchase within two days if the vendor were the registered proprietor, or else the purchaser would rescind the contract and sue for the recovery of the deposit and damages. On 27 November 1973, the vendor's solicitors wrote to the purchaser's solicitors to state, *inter alia,* that no question of rescission could arise as the agreement had been determined and the deposit forfeited.

On 15 June 1974, the vendor pursuant to another sale and purchase agreement sold the property to the appellant Macon for a sum of RM195,000. Macon then applied to remove the caveat entered by the purchaser on the property.

The Federal Court, through the judgment of Gill CJ (Malaya) (as he then was), upheld the High Court Judge's decision that the purchaser had the right to enter the caveat against the property as there was in existence a valid agreement for the sale of the land between the purchaser and the vendor.

My reading of the Federal Court judgment in *Macon, supra*, leads me to the conclusion that the purchaser's caveatable interest arose against the vendor, and that both the purchaser and the vendor were the parties to the sale and purchase agreement. That judgment, in my view, does not extend to non-parties, such as Vong, as shall be seen later in my judgment.

In *Ong Chat Pang, supra*, two purchasers bought the land in question at a consideration of RM30,000 for which they had paid RM15,000. The High Court, so did the Federal Court, held that these purchasers were entitled to have their caveat registered against the vendors as the registered owners thereof, being parties to the sale and purchase transaction.

Next, the advise of the Privy Council in *Registrar of Titles Johor, supra,* concerns the entry of a registrar's caveat arising out of income tax due and payable by the taxpayer to the Federal Government. The Privy Council held that the tax was a mere personal claim and did not come within the meaning of interest under s. 320(1)(b) and so no registrar's caveat could be entered. There was no question relating to the entry or removal of a private caveat. However, in the course of the judgment delivered by Lord Diplock, it was mentioned in passing and hence *obiter* that the purpose of a private caveat is to preserve the *status quo* pending the taking of timeous steps by the applicant to enforce his claim to an interest in the land by proceedings in the court.

As the facts in the above case are substantially different from those before me, I do not think the Privy Council advise is of any assistance to Vong herein.

The facts in *N. Vangedaselam, supra*, clearly revealed that the caveator and the caveatee were parties to an agreement dated 22 December 1966 under which the caveatee has expressly agreed that the land comprising the tindal's house occupied by the caveator was to be given free to the caveator. The caveator claimed an interest in a portion of a piece of the land. He brought an action against the registered proprietor for specific performance to transfer that portion to him. He also entered a private caveat against the land. On the death of the registered proprietor, his representatives applied to the court to remove the caveat. Suffian LP (as he then was) speaking for the Federal Court held that the caveat should remain pending the disposal of the civil suit, to prohibit any dealing in the land, but subject to the claim of the caveator in the portion occupied by him.

Again, the facts before me are entirely different and so no support from the Federal Court judgment may be garnered for Vong.

Finally, the advice of the Privy Council in *Loke Yew, supra*, does not concern the entry or removal of a private caveat, unlike the instant application. Hence, I am of the view that it cannot be of any assistance to Vong.

In relation to the merits of Vong's caveat, he relied on s. 323(1)(a), which, where relevant, reads as follows:

> **323 Applications for entry of private caveats**
>
> (1) The persons ... at whose instance a private caveat may be entered are:
>
> (a) any person ... claiming title to, or any registrable interest in, any alienated land or undivided share in any alienated land or *any right to such title or interest;*
>
> [Emphasis added]

In my view, the right to title or interest must be a registrable title or interest based on Vong's claim in relation to Laksamana Realty as the registered proprietor and not eg, against a stranger who is not a registered proprietor.

For the purpose of determining whether Vong has a registrable or caveatable interest against Laksamana Realty's land, it is enlightening to refer to the judgment of the Court of Appeal in *Luggage Distributor (M) Sdn. Bhd, supra,* where, at pp 741-743, Gopal Sri Ram JCA unfolded that the function of a judge in hearing such an application involves three stages of the inquiry *viz*:

1. Examination of the grounds expressed in the application for the caveat. If it appears that the grounds stated therein are insufficient in law to support a caveat, then *cadit quaestio*, and the caveat must be removed without the necessity of going any further;

2. The matter does not come to an end once the caveator satisfies the court that his claim as expressed in the application in Form 19B amounts to a caveatable interest. He must go on to show, in appropriate cases, that, based on the affidavits filed, his claim discloses a serious question meriting a trial;

3. After the above two hurdles have been crossed by the caveator, the question to be asked relates to the balance of justice, or what Lord Diplock termed in *Eng Mee Yong & Ors. v. V. Letchumanan* [1979] 2 MLJ 212 PC as "the balance of convenience".

Gopal Sri Ram JCA added that it is only upon satisfying these three stages of curial scrutiny that a caveat may be permitted to remain (see also *Murugappa Chettiar Lakshmanan v. Lee Teck Mook* [1995] 1 CLJ 545 CA; and *Goh Paik Swan v. Ng Choo Lum* [1996] 1 CLJ 77 CA).

By way of embarking on the first stage of the inquiry, I must proceed to examine the ground expressed in the application for the caveat in Form 19B as alluded to above, in order to determine whether it is sufficient or insufficient in law to support the caveat. My anxious examination of the ground in Vong's Form 19B read with his statutory declaration leads me to the specific finding that his alleged right to the title or interest in the land, if any, is directed wholly and exclusively against one Tan Guan Soon on behalf of Tan Guan Soon's father, one Tan Huan, and also one Tan Eng Chye who was alleged to have jointly developed the land pursuant to an agreement dated 5 May 1964, some 41 years and three months ago.

Form 19B had not raised any claim to title or interest against Laksamana Realty in order to come within the ambit of the first stage of the inquiry. In my view, Vong's ground expressed in his Form 19B is insufficient in law to support a caveat. Hence, *cadit quaestio*.

An authority that reveals facts akin to those in the instant application may be found in *Mok Yong Kong, supra*, where no allegation whatsoever was made against the registered proprietor of the subject property at the material time the caveat was lodged. Gopal Sri Ram JCA who spoke for the Court of Appeal held at pp. 721H-722A, that the caveat was liable to be removed on this ground alone, as being frivolous and vexatious, as no credible claim to title or interest was made in accordance with s. 323(1), adding that a caveator must be held to the grounds he alleged in his application in Form 19B when lodging his caveat.

Conclusion

On the foregoing grounds, I hold that Vong has no caveatable interest in Laksamana Realty's land. I therefore allow Laksamana Realty's application in encl. 2 and make an order in terms thereon as adumbtrated at the outset of this judgment.